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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 351

MRS. VIRGIE COOK,
Petitioner,

versus

STATE FARM INSURANCE COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

W. E. MORSE,
Plaza Building
Jackson, Mississippi

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Mrs. Virgie Cook, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above entitled case on the 27th day of March, 1961.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Mississippi has not yet been reported in the state reports, but is reported in advance sheet No. 2, 128 So. 2d 363, and is printed in appendix A hereto, infra, page 15. The judgment

of the Supreme Court of the State of Mississippi is printed in appendix A hereto, infra, page 26.

JURISDICTION

The judgment of the Supreme Court of the State of Mississippi was entered on March 27, 1961 (infra, appendix A, p 26) and is a final judgment. No rehearing was requested or granted and an extension through 24 August was granted by Justice Black to petition for certiorari. The statutory provision believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED FOR REVIEW

The Supreme Court of the State of Mississippi in its opinion and judgment referred to held that the Louisiana Insurance Direct Action Statute (LSA:RS Title 22, §655) was procedural only and conferred no substantive right which could be enforced in the courts of the state of Mississippi and held also that the decision of this court in Lumbermen's Mutual Casualty Co. v. Elbert, 75 S. Ct. 151, 348 U. S. 48, 99 L. Ed. 60 (1954) did not affect the power of the state court so to decide. This presents the question of whether if a substantive foreign rule is embodied in a statute and the court of forum erroneously decided that the point involved is procedural rather than substantive, thereby applying its own rule instead of the foreign statute, there is a denial of full faith and credit to the foreign statute under the Constitution of the United States, Art. IV, §I.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution of the United States, Art. IV, §1 provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Louisiana Statutes Annotated, Revised Statutes, Title 22, § 655 provides:

> "The injured person or his or her heirs, at their option, shall have a right of direct action against the insurer within the terms and limits of the policy in the parish where the accident or injury occurred or in the parish where the insured has his domicile, and said action may be brought against the insurer alone or against both the insured and the insurer, jointly and in solido. This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana.* * * * It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could

> be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state."

LSA-Rev. Stat. 1950, §22:655, as amended by Act 541 of the Louisiana Legislature of 1950. As to the scope of this provision according to Louisiana courts, see Rome v. London & Lancashire Indemnity Co. of America, Ia, app., 169 So. 132.

> "No certificate of authority to do business in Louisiana shall be issued to a foreign or alien liability insurer until such insurer shall consent to being sued by the injured person or his or her heirs in a direct action as provided in Section 655 of this Title, whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not, and whether or not such policy contains a provision forbidding such direct action, provided that the accident or injury occurred within the State of Louisiana. The said foreign or alien insurer, shall deliver to the Secretary of State as a condition precedent to the issuance of such authority, an instrument evidencing such consent."

LSA-Rev. Stat. 1950, §22:983, as amended by Act 542 of the Louisiana Legislature of 1950.

CONCISE STATEMENT OF THE CASE

Mrs. Virgie Cook as surviving spouse of John R. Cook, deceased brought suit in the Circuit Court of Lamar Coun-

ty, Mississippi, against the State Farm Insurance Company and others, as comprehensive automobile liability insurance carrier of a 1954 Plymouth automobile operated by Ervin Cook, on the 25th day of October, 1959, for the wrongful death of her husband for injuries arising from the alleged negligent operation of an automobile by the defendant's insured.

The declaration alleged that the defendant insurance company had complied with Louisiana Statutes Annotated, Revised Statutes 22:983 which required insurance companies to consent to be sued directly by an injured party and also pled specially the direct action statute of the State of Louisiana and alleged that thereunder plaintiff was entitled to bring this action in Mississippi.

The defendant moved to dismiss on the ground that there was no right or authority for a direct action against a collision insurance carrier under the laws of the State of Mississippi and that no effect should be given to the law of the State of Louisiana because the same was procedural rather than substantive.

The motion to dismiss was sustained on the 21st day of July, 1960, by the Circuit Judge on the theory that no direct action against the insurance carrier exists in the state of Mississippi.

A direct appeal was taken to the Supreme Court of the State of Mississippi where the plaintiff contended that full faith and credit should be given to the Louisiana Act and the decision of the Supreme Court of the State of Louisiana in West v. Monroe Bakery, 217 La. 189, 46 So. 2d 122 (1950);

Kimball v. Audubon Insurance Company, 103 So. 2d 529 (1958) and in conformity with the decision of the court in Lumbermen's Mutual Casualty Company v. Elbert, 75 S. Ct. 151, 348 U.S. 48, 99 L. Ed. 60 (1954) and Watson v. Employers' Liability Insurance Corporation, 75 S. Ct. 166, 348 U.S. 66.

STATEMENT OF THE CASE

On October 25, 1959, John R. Cook, husband of petitioner, was killed in an automobile accident in the State of Louisiana.

On June 1, 1960, petitioner brought suit for wrongful death against State Farm Insurance Company, alleging that State Farm Insurance Company was the automobile liability insurance carrier of Ervin Cook on the date of the fatal accident and that the negligence of Ervin Cook was responsible for the death of John R. Cook so that under LSA:RS 22:983 and LSA:RS 22:655 plaintiff was entitled to bring a direct action against the insurance company and that the said direct action statutes were entitled to full faith and credit in the courts of the State of Mississippi as well as Louisiana.

The defendant insurance company moved to dismiss on the ground that the Louisiana direct action statute was procedural only and thus had no extra-territorial effect. This judgment was sustained by the Circuit Court on the 21st day of July, 1960, and this position on appeal was sustained by the Supreme Court of the State of Mississippi holding that the decisions of this court in Lumbermen's Mutual Casualty Co. v. Elbert, 75 S. Ct. 151, 348 U.S. 48,

99 L. Ed 60 (1954) and Watson v. Employer's Liability Insurance Corp., 75 S. Ct. 166, 348 U.S. 66, 99 L. Ed 74 did not control and that the Louisiana Direct Action Statute was procedural only.

The Federal question was first raised in the brief of the appellant citing Watson v. Employers' Liability Insurance Corp., 75 S. Ct. 166, 348 U.S. 66, 99 L. Ed 74, and Lumbermen's Mutual Casualty Co. v. Elbert, 75 S. Ct. 151, 348 U.S. 48, 99 L. Ed 60 (1954) and in the brief of the appellee in seeking to avoid the effect of the full faith and credit clause of the constitution and of the decisions of this court on pages 14 and 15 of the brief of the appellant, State Farm Mutual Insurance Company, as follows:

> "The last case cited by the opposition from which there is a quotation is that of Lumbermen's Mutual Casualty Company v. Elbert, 99 L. Ed 58, 348 U.S. 48, 75 S. Ct. 151. That case arose in the State of Louisiana but was filed in the Federal Court and not in the State court and the issues there involved had to do with whether or not the statute must be strictly construed and the case must be tried in a Louisiana district court. Oddly enough, this case was decided in 1954. Just as oddly, Chief Justice Warren delivered the opinion. It is a little on the side of irony that the Brown case dealing with integration and the Elbert case were dumped upon society by the same inexperienced judge in the same year. The writer of this brief personally doubts that the Chief Justice knew what he was writing about. He surely showed no knowledge of the Louisiana laws in the writing done. He is one

of those who believes strongly in a centralized government and has no patience with States' rights or the sovereignty of the several states. The constitutionality of the Louisiana Act was raised. It was pointed out in the briefs that the Louisiana Act was remedial only. It was pointed out that the mere mention of insurance to the jury constitutes reversible error in most jurisdictions. Reference was made to Vol. 4, A. L. R. 2d 761, dealing with this general subject and how the courts of the United States generally react thereto. It is just as interesting to know that Justice Frankfurter wrote a special concurring opinion and it is interesting enough to note that his observation that in Louisiana, plaintiffs in negligence suits have suddenly found the federal courts their protectors and insurance companies have discovered the virtues of the state courts.' No one would doubt that Justice Frankfurter is a trained lawyer, but he is indoctrinated with an idealogy distasteful to Mississippians. In Justice Warren we are disappointed. For fear that my own expressions may be contemptible even to those who have read what the writer of this brief thinks, no further discussion will be had of the Elbert Case; but an analysis thereof does not do good to the opposition here, even though that therein contained is followed to the letter."

The Supreme Court of Mississippi attempted to by-pass the federal question and the decision of this court in Lumbermen's Mutual Casualty Co. v. Elbert, 75 S. Ct. 151, 348 U.S. 48, 99 L. Ed 60 (1954) saying:

"The appellant also argues that in the case of Lumbermen's Mutual Casualty Company v. Elbert, 75 S. Ct. 151, 358 U.S. 48, the United States Supreme Court upheld the right of an injured third party to bring a direct action based upon diversity of citizenship against an insurance company not in Louisiana, and that such party was not a nominal party but was the real party in interest. We do not believe this case requires us to overrule the McArthur case, supra, because of the following general rules and cases on conflicts of law."

ARGUMENT AMPLIFYING REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

In cases of Lumbermen's Mutual Casualty Co. v. Elbert, 75 S. Ct. 151, 348 U.S. 48, 99 L. Ed 60 (1954); Maryland Casualty Co. v. Cushing, 74 S. Ct. 608, 347 U.S. 409 (1954); Watson v. Employers' Liability Insurance Corp., 75 S. Ct. 166, 348 U.S. 66, 99 L. Ed 74, it was held that the Louisiana Direct Action Statute created federal substantive rights as well as procedural rights. In the Elbert case the court said, citing West v. Monroe Bakery, 217 La. 189, 46 So. 2d 122, and Jackson v. State Farm Mutual, 211 La. 19, 29 So. 2d 177:

"The state has created an optional right to proceed directly against the insurer; by bringing the action against the petitioner, respondent has apparently abandoned her action against the tortfeasor. See Miller v. Standard Insurance Company, 199 La. 515, 526, 6 So. 2d 646, 649. Thus a complete disposition of the entire claim may be made in this

one action, without injustice to any of the participants. Finally, petitioner contends that the Federal Courts should decline, as a matter of discretion, to exercise their jurisdiction over suits against an insurer alone. This argument is based upon the differing standards of review on appeal of the jurial rate in the Louisiana and Federal Courts. . . ."

* * * *

"In Louisiana, the practice of bringing direct action in the Federal courts has long been recognized. See New Amsterdam Casualty Co. v. Soileau, 5th Cir., 167 Fed. 767, 6 ALR 2d 128, Certiorari denied, 335 U.S. 822, 69 S. Ct. 45, 93 L. Ed 376; Bankers Indemnity Co. v. Green, 5th Cir. 181 Fed. 2d 1; Belanger v. Great Am. Indemnity Co., 5th Cir. 188 Fed. 2d 196. Neither Federal nor Louisiana law suggests any reason to disturb this practice. The decision of the court of Appeals is affirmed."

The State of Louisiana in West v. Monroe Bakery, 217 La. 189, 46 So. 2d 122; and Jackson v. State Farm Mutual, 211 La. 19, 29 So. 2d 177, and in McDowell v. National Surety Corp., 68 So. 2d 189, Certiorari denied, 74 S. Ct. 867, 347 U.S. 995 held the Louisiana direct action statute to be substantive.

While it is within the competency of the court of the forum, in this case, Mississippi, to determine what is matter of procedure and what of substance, that rule has the limitation that if a substantive foreign rule is embodied in a statute and the court of the forum erroneously decides

that the point involved is procedural rather than substantive and thereby applies its own rule instead of the foreign statute, thre is a denial of full faith and credit to the foreign statute, John Hancock Mutual Life Insurance Co. v. Yates (Ga.) 57 S. Ct. 129, 299 U.S. 178, 81 L. Ed 106.

In the case of John Hancock Mutual Life Insurance Co. v. Yates, the Supreme Court of Georgia held that extraterritorial effect would not be given to the law of New York to the effect that a misstatement made in an application for life insurance was a material misrepresentation which would avoid the policy. The Georgia court held that this was a question for the jury as to the materiality of the misrepresentations and thus a matter affecting the remedy only and in the validity from an effect of the contract. Thus the full faith and credit clause of the Federal Constitution did not compel application by Georgia of the New York statute, just as the Mississippi court reasoned on the Louisiana Direct Action Statute. The United States Supreme Court in that case said:

> "The Statute of New York prescribes or limits the things which will be affected to create binding contracts of insurance . . . as construed by the highest court of the state, the statute makes the policy with the application annexed the entire contract between the parties. And it declares that a false answer in the application to the precise question here involved is a material misrepresentation which avoids the policy; and the fact that a truthful answer was orally given to the answer but not recorded is without legal significance. In further declaring the statute enacts a rule of sub-

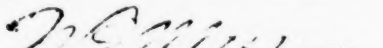
> stantive law which became a term of the contract. . . . To refuse to give that defense effect would irremediably subject the company to liability. Cf Bradford Electric Light Company, Inc. v. Clapper 286 U.S. 145, 160, 52 S. Ct. 571, 576, 76 L. Ed 1026, 82 ALR 696, because the statute is a 'public act', faith and credit must be given to its provisions as fully as if the materiality of the specific misrepresentation in the application and the consequent nonexistence of liability, had been declared by a judgment of the New York Court . . . Reversed."

With deference we submit that the decisions of the Supreme Court of the State of Louisiana construing the Louisiana Direct Action statute to grant substantive rights, the decisions of the Supreme Court of the United States declaring the Louisiana direct action statute to grant substantive rights must be read into the Louisiana direct action statute. As thus construed, the Louisiana statute granted to the plaintiff in the case at bar a substantive right which must be given full faith and credit in the courts of Mississippi.

CONCLUSION

For the foregoing reasons this petition for writ of certiorari should be granted.

Respectfully submitted,



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CERTIFICATE

I certify that I have served a true and correct copy of the foregoing Petition for Writ of Certiorari together with accompanying index, opinion below, jurisdictional statement and questions presented for review, constitutional provisions and statutes involved, concise statement of case and statement of the case, argument amplifying reasons relied on for the allowance of the writ, and conclusion upon Honorable M. M. Roberts, Citizens Bank Building, Hattiesburg, Mississippi, Attorney for Respondent, State Farm Mutual Insurance Company, personally by delivering at his office at Citizens Bank Building, Hattiesburg, Mississippi, a true and correct copy hereof.

This the 23rd day of August, A. D., 1961.

BY: _____

Of Counsel for Petitioner

APPENDIX A

IN THE SUPREME COURT OF MISSISSIPPI

NO. 41,785

MRS. VIRGIE COOK

versus

STATE FARM MUTUAL INSURANCE COMPANY

RODGERS, JUSTICE:

Mrs. Virginia Cook filed her declaration in the Circuit Court of Lamar County, Mississippi, alleging that her husband John R. Cook lost his life in an automobile accident which occurred on October 23, 1959, near Bogalusa, Louisiana. Her husband was a passenger in an automobile driven by Irving Cook which collided with an automobile operated by Kennard McConnico, a citizen of the State of Texas. The defendant, State Farm Mutual Insurance Company, was the insurer of the automobile operated by Irvin Cook, and the Allstate Insurance Company was the insurer of the car of McConnico. The plaintiff is a resident citizen of Lamar County and Irving Cook is a resident citizen of Washington County, Mississippi. Suit was brought against the two above-named insurance companies.

The defendant Allstate Insurance Company settled the claim of the plaintiff and was properly released by order of the court. The defendant State Farm Mutual Insurance

Company filed a motion asking the court to dismiss the declaration against it on the grounds that the defendant insurance company could not be sued by direct action since the law of the State of Louisiana permitting a suit against the insurance company before judgment against the insured is said to be procedural and has no extraterritorial effect. The court sustained this motion and the case was dismissed. The plaintiff made bond and the case is here on appeal. It is argued on appeal that the defendant-appellee insurance company was qualified to do business in the State of Louisiana and in the State of Mississippi; that the action is brought by the plaintiff-appellant under Act No. 55, Louisiana Laws of 1930, The Direct Action Statute of the State of Louisiana, and that this law is a substantive law of the State of Louisiana and is not a procedural law, and, therefore, the action against the defendant, State Farm Mutual Insurance Company, could be maintained in the Circuit Court of the State of Mississippi.

The action here involves the construction of Act No. 55, Louisiana Laws of 1930, which is set out in full in the case of Burkett v. Globe Indemnity Company, 182 Miss. 423, 181 Co. 316.

The Court later passed upon this question in the case of McArthur v. Maryland Casualty Co., 184 Miss. 663, 186 So. 305, in which Judge McGehee, speaking for the Court, in discussing a suggestion of error in the case of Travelers' Insurance Company v. Inman, 157 Miss. 648, 128 So. 878, quoted from that opinion as follows: "In administering the laws of the State of Louisiana, of course, we are bound by the construction given such laws by the Supreme Court of Louisiana." "Therefore, in view of the decisions of the

Court of Appeals of Louisiana, hereinbefore referred to, holding that Act No. 55 of 1930 is procedural and remedial, and which we feel obligated to follow, whether we are inclined to fully agree with that interpretation of the act or not, it results that the same should be given no extra-territorial effect * * * ". The plaintiff insists that the supreme Court of the State of Louisiana in the case of West, et ux v. Monroe Bakery, Inc., et al., 217 La. 189, 46 So. 2d 122, was reexamined by the Supreme Court of the State of Louisiana and that the Supreme Court held that Act No. 55 of the Laws of 1930 conferred substantive rights.

The appellant also argues that in the case of Lumberton Mutual Casualty Company v. Elbert, 75 S. Ct. 151, 358 U. S. 48, the United States Supreme Court upheld the right of an injured third party to bring a direct action based upon diversity of citizenship against an insurance company not in Louisiana, and that such party was not a nominal party but was the real party in interest. We do not believe this case requires us to overrule the McArthur case, supra, because of the following general rules and cases on conflicts of law.

"While the substantive rights of the parties to an action are governed by the lex loci, the law of the place where the right was acquired or the liability was insurred, see the C. J. S. title Actions, Sec. 2 a, the lex fori see supra Sec. 9, or law of the jurisdiction in which relief is sought, controls as to all matters pertaining to remedial, as distinguished from substantive, rights. This rule, which has been embodied by the American Law Institute in its

Restatement of the Law of Conflict of Laws, obtains whether the action is on contract or for tort.

"The rule of comity extends to *substantive rights* only and does not in general apply to remedies. Each state regulates its own jurisprudence in its own way, and procedural statutes cannot be given extraterritorial effect. Litigants who, although nonresidents, resort to the courts of a state or are compelled to appear therein may not insist upon the trial of their rights by some other or different rules of procedure which may prevail in the state in which the cause of action arose.

"The only uncertainty which may arise concerning the rule that the lex fori regulates all remedial matters results from the conflicting views as to what matters fall within one or the other of such classes of rights, or where the same claim may, according to the surrounding conditions, fall into either class. Matter of substance, whether presented by way of an objection to the admissibility of evidence or as a point in pleading, is a matter of right, and not of remedy, but it is frequently difficult to ascertain whether a particular inquiry relates to the remedy or to a substantive right." (Emphasis ours.) 15 C. J. S., Conflict of Laws, pp. 948-949.

In the case of Martin v. Talcott, 146 N. Y. S. 2d 784, where a suit is brought in New York for personal injuries which occurred in New Jersey where the defendants were sued as testamentary trustees and not as individuals, it is said: "It has been held in New Jersey that, where a trustee is sued only in his representative capacity, the complaint

must be dismissed, because an amendment will not be permitted to change the capacity in which a defendant is sued, Boyle v. Nolan, supra, (123 N. J. L. 365, 8 A. 2d 358). However, it is the law of the forum which determines not only questions as to who may be sued but also questions as to the form and amendment of the pleadings (Restatement, Conflict of Laws, Secs. 588, 592.)"

The general law is set out in 11 Am. Jur., Conflict of Laws, Sec. 187, pp. 500-501, as follows: "The untimate question whether several defendants may be sued individually or must be sued collectively depends upon the question, which must be first determined, whether the obligation or the transaction out of which the claim arises is joint, or joint and several, or merely several. This is a question which goes to the legal effect of the contract or transaction, and as such is to be determined by the law of the state where the contract was made or the transaction arose. Where, according to the law of that state, the contract or the transaction is determined to be joint or joint and several, and not merely several, the question whether, upon a joint or joint and several contract or transaction the several defendants must or may be sued jointly or severally, or whether an intermediate number may be sued, is a remedial question which must be determined according to the law of the forum."

"There may be said to be five instances wherein it is generally considered that the municipal law of the State where the question is raised (lex fori) forbids the enforcement of a foreign law. (1) Where the enforcement of the foreign law would contravene some established and im-

portant policy of the State of the forum; (2) where the enforcement of such foreign law would involve injustice and injury to the people of the forum; (3) where such enforcement would contravene the canons of morality established by civilized society; (4) where the foreign law is penal in its nature; and (5) where the question relates to real property." Minor, Conflict of Laws, p. 9. See also 77 A L. R. 1108, Anno.

In a Louisiana case interpreting Mississippi law, the question of conflict of law as to procedure was discussed, as follows: "Lynch v. Postlethwaite (1819) 7 Mart. (La.) 69, 12 Am. Dec. 495, was an action for breach of a contract executed in Mississippi, in which the plaintiff failed to join all the parties to the contract, who were partners. Under the law of Mississippi a partner sued alone might abate the suit on the ground of nonjoinder of his partners. The court held that the question was one of remedy and must be governed by the law of Louisiana — the forum — under which the obligation of the parties was joint and several, and they could be sued individually or collectively at the option of the creditors." 77 A. L. R., Conflict of Laws, Anno., p. 1109.

In the State of Arkansas the Mississippi law of procedure in the Mississippi courts was examined to determine that law was applicable in the Arkansas court in the following case: "In this case the plaintiff brought assumpsit in his own name on a judgment obtained by an administratrix in Mississippi, alleging that, under an order of the Probate Court of that State, the administratrix had sold the judgment, and the plaintiff had purchased, and taken

an assignment of it to himself. On demurrer to the declaration, Held, That the action should have been debt, and not assumpsit; and that, in the absence of any allegation in the declaration that there was a statute of Mississippi authorizing the purchaser of a judgment at administration sale to sue thereon in his own name, he could not maintain the action here, but the suit should have been brought in the name of the plaintiff in the judgment." Syllabus, Morehead v. Grisham, 13 English Reports, Vol. III, p. 431.

In 62 A. L. R. 2d 49[illegible], two Mississippi cases are discussed where the law of the forum is applied: "Although under the law of Louisiana the assignee (syndic) of an insolvent was entitled to sue upon an open account belonging to the insolvent, it was held in Tully v. Herrin (1870), 44 Miss. 626, that he could not maintain in Mississippi a suit at law on the account in his own name, the court pointing out that his beneficial interest in the chose in action would be respected and enforced but that, touching the remedy, he must submit to the law of the forum. * * *

"In Kirkland v. Lowe (18570 33 Miss 423, 69 Am. Dec. 355, it was held that an insolvent could maintain an action to recover money due upon an open account, notwithstanding the appointment of a 'syndic' in Louisiana, the court pointing out that the law of the forum governed the question of who should be a party to an action. Under the law of Louisiana the 'syndic' was entitled to bring the action."

In the case of Aetna Freight Lines, Inc. et al. v. R. C. Tway Co. Inc d.b.a. Kentucky Manufacturing Company, 62 A.L.R. 2d 480, where a suit was filed against a manufac-

turer of a trialer by the owner to recover the amount paid in settlement of a claim of a person injured when the drawbar holding the trailer broke — the question was whether the owner and lessee, or their liability insurer which loaned the money to make the settlement, were the real parties in interest — is a matter of procedure controlled by the laws of the forum rather than the law of the state where the accident occurred. The Court said matters of procedure are determined by the law of the forum and the question of who must sue or be sued is a procedural question.

Sec. 11 Am. Jur., Conflicts of Law, Sec. 187, p. 500; Rest. of the Law, Conflicts of Law, Sec. 588, p. 705.

In the case of Kirkland and Company v. Lowe, Pattison & Company, 33 Miss. 423, where the question arose as to who was a necessary party to a suit, the Court held that the question as to who were proper parties to a suit relate to the form of the remedy rather than to the right or merit of the claim and is to be determined by the laws of the forum.

In the case of the Bank of Louisiana v. D. P. Williams, et ux., 43 Miss. 618, the Court held that where a foreign creditor comes into this State and seeks compulsory payment of a debt made by his wife, he must submit himself to the law of the forum for his remedy. He must consult the rules and regulations which govern courts here as to the form of the suit, according to the character of his right. Our system of jurisprudence determines whether he must sue at law or in chancery.

National Mutual Casualty Company v. Blackford, 141 S.W. 54 (Ark. 1940). This case was tried in Arkansas but under the statute of Oklahoma, as construed by the Supreme Court of that state, a liability policy containing provisions that the insurer agrees to pay any final judgment of personal injuries caused by motor vehicle operation. that a judgment creditor may maintain an action to compel payment and insurer agrees that if it fail to pay such final judgment, an action may be maintained against insurer to compel payment. The laws of Arkansas will not permit the joining of a suit on a contract of an insurance company and a suit for the accident, or, that is to say, a suit ex delicto and ex contractu.

The law in question here, Act 55, Louisiana Laws of 1930, which is set out in Burkett v. Globe Indemnity Company, 182 Miss. 423, 181 So. 316, is a law that requires each liability insurance company doing business in the State of Louisiana to write into its policy "a provision to the effect that the insolvency or bankruptcy of the assured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and any judgment which may be rendered against the assured, for which the insurer is liable, which shall have become executory, shall be deemed prima facie evidence of the insolvency of the assured, and an action may thereafter be maintained with the terms and limits of the policy by the injured person or his or her heirs against the insurer company. Provided further that the injured person or his or her heirs, at their option, shall have a right of direct action against the insurer company within the

terms, and limits of the policy, in the parish where the accident or injury occurred, or in the parish where the assured has his domicile, and said action may be brought either against the insurer company alone or against both the assured and the insurer company, jointly and in solido."

The liability companies doing business in Louisiana write into their contracts an agreement that they may be sued "alone, or against both the assured and the insurer company, jointly and in solido."

There is no charge made in the declaration filed in Lamar County that the contract here sued on complies with the Louisiana law, nor is it shown that this contract is a Louisiana contract. On the other hand, it is said that the insured Irvin Cook is a resident citizen of the State of Mississippi. Therefore, if the State Farm Mutual Insurance Company's contract with Irvin Cook prevents a suit against the insurance company until judgment has been obtained against him, no suit could be maintained against the insurance company by virtue of this contract. If it is a Mississippi contract, although the accident occurred in Louisiana and although the defendant State Farm Mutual Insurance Company could be sued in the courts of Louisiana by virtue of its agreement with the State of Louisiana, it could not be sued in Mississippi until the provisions of its contract with Irvin Cook had been observed.

We are not, however, satisfied to rest this opinion upon the contract of insurance between the State Farm Mutual Insurance Company and Irvin Cook. It is the opin-

ion of this Court that a litigant cannot sue in the courts of any country, whatever his rights may be, unless in conformity with the rules prescribed by the laws of that country. A claimant must take the law as he finds it; he cannot place himself in a better position than other litigants by invoking laws and procedures of a foreign sovereignty. Societe Internationale, etc. v. McGranery, 111 F. Supp. 435.

Where a statute conferring a special or peculiar remedy is enacted by a state, such a remedy will not be extended to actions brought in another state unless by a fair and reasonable construction is applicable to that state and it is within the competency of the court of the forum to determine what is a matter of procedure and of substance. 15 C.J.S., Conflicts of Law, Sec. 22, p. 949.

We now therefore reaffirm the case of McArthur v. Maryland Casualty Company, supra, and hold that insofar as this State is concerned the law of Louisiana, Act No. 55, Laws of 1930, is procedural and remedial and the law of the forum, that is to say, Mississippi, will be applied. The case is therefore affirmed.

AFFIRMED.

LEE, GILLESPIE, McELROY AND JONES, JJ., CONCUR.

IN THE SUPREME COURT OF MISSISSIPPI

NO. 41,785

MRS. VIRGIE COOK

. versus

STATE FARM MUTUAL INSURANCE COMPANY

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of

Lamar County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 21st day of July 1960 — be and the same is hereby affirmed. It is further ordered and adjudged that the appellee do have and recover of and from the appellant and E. J. Currie, Jr., and Carl E. Berry, Jr., sureties on the appeal bond herein, all of the costs of this appeal to be taxed, for which let execution issue as at law.

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DATED: March 27, 1961

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the above foregoing is a true and correct copy of the Judgment entered by the Court in the cause of Mrs. Virgie Cook vs. State Farm Mutual Insurance Company, No. 41,785, as same appears of record on file in my office.

Given under my hand, with the seal of said Court affixed, at office, in the City of Jackson, Miss., this the 16th day of August, A. D., 1961.

/s/ TOM I. ELLIS
Clerk of Supreme Court.

(SEAL)